Affidavit Properties.

The fifth Commercial Maxim[1] is a fundamental aspect of commercial law: "Truth is expressed by means of an affidavit." Since each soul perceives and experiences things from his particular point of view, all truth is subjective.[2] Truth, like beauty, is in the eye of the beholder.

Inasmuch as everyone has free will and is an irreducible unit of experience, choice, responsibility, and self-government, each particular being is the only one who can speak his own truth—and has the right to do so. No one is qualified to express the truth of another.

Dispute-resolution ("law") requires a universally accepted means for someone to assert his subjective truth in a manner that all understand is intended to be uttered without equivocation, concealment, deception, or insincerity. An *affidavit*, especially an affidavit "sworn true, correct, and complete," has evolved over time to be the accepted process by which someone expresses his truth in the most solemn, absolute, ceremonial means possible, past which nothing exists.

> ***Non est arctius vinculum inter homines quam jusjurandum.***
> **There is no stronger link among men than an oath.[3]**

An oath in the form of an affidavit, as a solemn and sworn statement of truth, automatically renders the affiant the subject of a charge of perjury if any portion of his affidavit is false.

> Affidavit. . . . A written or printed declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before a person having authority to administer such oath or affirmation. . . . [*Black's Law Dictionary*, 5th ed., s.v. "Affidavit"]

> Oath. . . . Any form of attestation by which a person signifies that he is bound in conscience to perform an act faithfully and truly . . . An affirmation of truth of a statement, which renders one willfully asserting untrue statements punishable for perjury. An outward pledge by the person taking it that his attestation or promise is made under an immediate sense of responsibility to God. [[4]] A solemn appeal to the Supreme Being in attestation of the truth of some statement. An external pledge or asseveration, made in verification of statements made, or to be made, coupled with an appeal to a sacred or venerated object, in evidence of the serious and reverent state of mind of the party, or with an invocation to a supreme being to witness the words of the party, and to visit him with punishment if they be false. . . . [Ibid., s.v. "Oath."]

In order for a document to be in the nature of an affidavit, it must manifest the characteristics and properties set forth below; *to wit, an affidavit:*

1. States facts ("truth") only on the basis of firsthand personal knowledge and experience, not conjecture, theory, or hearsay. The facts stated must express the direct knowledge of the affiant (not mere "information and belief," which is hearsay).
2. Cannot be argumentative.
3. Must not draw conclusions of law.

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[1] *See* Thomas Clark Nelson, Q&A (Purging America of the Matrix), "Maxims of Commercial Law," 25, https://archive.org/details/PurgingAmericaOfTheMatrixQA.

[2] Most people have heard the expression "The map is not the territory" (Alfred Korzybski, 1879–1950). If someone expresses his subjective truth and others verify the same truth in their own subjective terms, said "truth" is labeled as *objective fact*, i.e., the abstract "map" is acknowledged by others as accurately representing the "territory."

[3] *Bouvier's Law Dictionary*, 3rd. rev., 8th ed., s.v. "Maxim.

[4] *Jurare est Deum in testum vocare, et est actus divini cultus.* To swear is to call God to witness, and is an act of religion. [Ibid.]

4. Can be executed and served at any time without prior notice to an adverse party. Because an affidavit is not subject to cross-examination, it is in the nature of an *ex parte*[5] proceeding.

5. Must be certified (witnessed) by someone authorized to administer oaths, either two (sufficient) or three (better) competent witnesses or a notary public.[6] If an affidavit is not so sworn to it is not considered a bona fide affidavit.

6. Constitutes one of three species of testimony,[7] and stands as uncontroverted evidence if not timely rebutted point-for-point by proper counteraffidavit executed by the adverse party.

7. Must be executed and sworn to as true, correct, and complete, i.e., under oath, defining the degree and nature of the liability being staked by the affiant for the veracity, accuracy, relevance, and verifiability of everything stated in the affidavit.

8. Can be overcome only by point-for-point rebuttal by counteraffidavit under the same degree of risk/sacrifice, i.e., sworn to as true, correct, and complete, manifesting material facts and evidence that surmount those in the adverse affidavit.

9. Stands as the truth concerning each point that is not rebutted and surmounted by counteraffidavit as above; *when the adverse party has a duty to speak*[8] but does not answer at all, the entire affidavit stands as the truth in the matter.

10. Stands in full as the judgment (application) of the law if completely unrebutted by counteraffidavit as above; invokes execution of the law concerning the points in the affidavit that are not expressly rebutted and surmounted in a counteraffidavit.

Without a *competent witness*, i.e., valid testimony, no court has any power to act. Judgments may be made solely on evidence; but all evidence, in order to *be* evidence, requires that a competent witness attest its validity, i.e., verify that which is submitted. Without a competent witness, a judgment is void.

In court the adverse party has the right to cross-examine. In a non-judicial dispute/ controversy, when testimony is obtained by affidavit (which is almost always a non-judicial exercise) the adverse party has the right, if he desires not to have the affiant's affidavit stand as the truth in the matter, to respond to the affidavit point-for-point via counteraffidavit sworn to as true, correct, and complete.

Regardless of the form in which testimony is introduced into proceedings and disputes, once a competent witness has submitted testimony (by any means, including affidavit) the adverse party must:

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[5]EX PARTE. One side only; by or for one party; done for, in behalf of, or on the application of, one party only. . . . *Black's Law Dictionary*, 1st ed. s.v. "Ex parte."

[6]Certification of an affidavit, i.e., "third-party witness," has been universally necessary for thousands of years. The process began with someone who personally knew the affiant signing and certified that the name was truly that of the affiant and not an imposter. Such measure was taken to prevent fraud and forgery in the event that someone other than the one whose name was being signed was actually signing the affidavit.

[7]The other two forms of testimony are (1) *deposition*, done out of court, under oath before an examiner, commissioner, or officer of the court, and reduced to writing, usually by a court reporter, and (2) under *direct (oral) examination* on the witness stand.

[8]*acceptance by silence*. Acceptance of an offer not by explicit words but through the lack of an offeree's response in circumstances in which the relationship between the offeror and the offeree justifies both the offeror's expectation of a reply and the offeror's reasonable conclusion that the lack of one signals acceptance. ● Ordinarily, silence does not give rise to an acceptance of an offer, but this exception arises when the offeree has a duty to speak. *Black's Law Dictionary*, 7th ed., s.v. "Acceptance."

1. Disprove stated facts or prove alternative facts; and
2. Prove application of law re stated facts or alternative facts.

In the event that the adverse party fails to comply with the above two essentials, the testimony of the competent witness is established as conclusive evidence.

For the most part (almost always), attorneys (including government attorneys) are not competent witnesses because they do not (1) have personal knowledge of facts, and (2) submit whatever they have to say under oath, i.e., "the truth, the whole truth, and nothing but the truth" (e.g., via affidavit sworn to as *true*, *complete*, and *correct*, respectively). Attorneys act under authority of the system, not under their personal unlimited liability, and only relate second-hand information, i.e., what is related to them by others. Legally, therefore, what an attorney states is *hearsay*. It is not the result of direct experience and cannot be attested on the basis of direct personal knowledge.

Ideally an affidavit should:

1. Have all paragraphs numbered—for the purpose of, among other things, identifying particular points/passages for future reference should rebuttal be attempted.
2. Not violate any of the above-stated criteria.
3. Have a unique identifier, such as a form number, which is different from that of any other affidavit, for unambiguous future reference and enhanced admissibility in evidence.
4. Be written in clean, clear, matter-of-fact, minimalist style.
5. Be written in the present tense.
6. Avoid use of pronouns. The less ambiguity, the less need for a third party, such as a judge, to intervene in the matter to interpret the text.
7. Contain as few adjectives and adverbs as possible, since such color matters and operate to tell people what to think. Often the more nakedly words and terms are expressed the more definitive and ironclad they are.
8. Have attached, as much documentary evidence (insurmountable and incontrovertible is best) in support of the assertions made in the affidavit as is apposite to produce the desired result.